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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/776,048	02/12/2004	Solomon Aguilera	NNY2426	2115

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EXAMINER

ROWAN, KURT C

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 03/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/776,048	Applicant(s) AGUILLERA, SOLOMON	
	Examiner Kurt Rowan	Art Unit 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|-------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2/12/2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-3, 6, 7, 8, 11, 12, 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bowman in view of Morelli for substantially the same reasons stated in the first Office Action.

The patents to Bowman and Morelli show traps for attracting and holding rodents within a confined area. Bowman shows a cage formed a durable material such as wire mesh and having a cavity for holding a plurality of rodents. Bowman shows the cage having opposite spaced end portions with a plurality of apertures therein for defining an entrance path into the cage. The end portions are taken to be the framed edges of the trap. Bowman shows the cage having a top surface and a bottom surface (both not labeled but see Fig. 1). Bowman shows a plurality of trap doors 4, 4 pivotally connected to the cage adjacent the opposed end portions for causing rodents to enter the cavity and become trapped therein as rodents move toward the bait. Bowman does not show openings at the top and bottom of the trap each with a pivoted door. The patent to Morelli shows a trap having openings 15, 16 at the bottom of the trap and 20, 21 at the top of the trap. In reference to claims 1, 7, and 12, it would have been obvious to

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provide Bowman openings at the top and bottom of the trap as shown by Morelli for the purpose of adding bait and removing trapped rodents. Morelli shows the bait container opening at the bottom of the trap and the opening for removing trapped rodents at the top, but it would have been obvious to reverse the locations since the function is the same and stated problem is solved. See *In re Japikse*, 86USPQ 70. Morelli shows pivoted door 19 for the top closure and a slide door for the bottom closure, but it would have been obvious to employ two hinged or pivoted closures since the type of closure is a matter of design choice absent a showing of unexpected results. In reference to claims 2 and 7, Bowman shows a plurality of outer end portions 70a, 70a and a spring member 6 for connecting the outer end portions to the cage. Bowman shows one spring but it would have been obvious to employ more than one for multiplied effect. See *In re Harza*, 124 USPQ 378. Bowman show a plurality of stop members 13, 13. Bowman shows the doors pivoting downwardly. Bowman does not disclose the doors pivoting upwardly after pivoting downwardly, but it appears that they do if only a small amount due to the rebound from the impact with the end portions of the cage noting the stop members have catches facing downwardly to prevent the doors from pivoting back-up. In reference to claims 3, 8, and 13, Morelli shows the aperture disposed in a substantially vertical direction medially of the opposed end portions of the cage and the bait being positioned between the entrance paths. In reference to claims 6 and 11, Bowman shows the cage being formed from wire mesh material.

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3. Claims 4, 5, 9, 10, 14, 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bowman in view of Morelli as applied to claim 1 above, and further in view of Posey for substantially the same reasons stated in the first Office Action.

The patents to Bowman, Morelli, and Posey show rodent traps. Bowman and Morelli have been discussed above and do not show a plurality of handles secured to the cage. The patent to Posey shows a rodent trap having a cavity 5 disposed below the entrance paths 9, 10, 12 and a plurality of handles 36, 37 secured to the cage. In reference to claims 4, 9, and 14, it would have been obvious to provide the trap of Bowman as modified by Morelli with a cavity below the entrance paths as shown by Posey to prevent the escape of the trapped rodents while being able to trap more rodents. In reference to claims 5, 10, and 15, Posey shows handles 36, 37.

Response to Arguments

4. Applicant's arguments filed January 6, 2005 have been fully considered but they are not persuasive. Applicant's response overcomes the objection to the claims and objection for not showing claimed subject matter. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the knowledge is generally available to one of ordinary skill in

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the art. It is not clear how Bowman with latches 13 and lugs 70a teaches away from the claimed invention when claim 1 does not mention latches or lugs. In reference to claims 2, 7, and 12, applicant argues that doors of Bowman can not pivot upwardly to a resting position. However, the doors of Bowman can be manually pivoted upwardly to a resting position. It appears that more structure of the doors should be recited to reflect the weight of the rodents causes the doors pivot downwardly and pivot upwardly automatically after rodents enter the cavity. Applicant further argues that there is no reason to combine Morelli with Bowman since Bowman can remove the trigger from the cage prior to setting the trap and tie bait to it. However, by combining the references a significant advantage will be had. That is, the trigger will not have to be removed to add bait which is advantage in speed and convenience when a large number of traps are being used. In reference to claims 4, 5, 9, 14, applicant argues that since the latches 13 of Bowman positively lock the trap doors so that Bowman teaches away from the claimed invention and that it is improper to combine references that teach away from the claimed invention. In response to applicant's arguments against the references individually such as Bowman, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

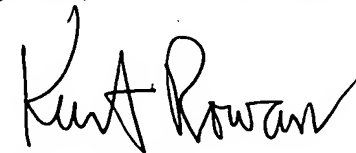
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kurt Rowan whose telephone number is 703 308-2321. The examiner can normally be reached on Monday-Thursday 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 703 308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Kurt Rowan", with a stylized flourish at the end.

Kurt Rowan
Primary Examiner
Art Unit 3643

KR